

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Mark Hunt,

Case No.: 2:17-cv-00085-JAD-VCF

**Plaintiff**

V.

Zuffa, LLC, et al.,

## Defendants

## **Order Denying Zuffa's Motion for Attorney's Fees and Costs**

[ECF No. 186]

8 After I granted summary judgment in its favor on plaintiff Mark Hunt’s last remaining  
9 claim, defendant Zuffa, LLC moves for attorney’s fees and costs under its Promotional and  
10 Ancillary Rights Agreement (PARA) with Hunt. Hunt did not file an opposition, but this  
11 district’s local rules require me to conduct an independent review of the record.<sup>1</sup> Although Hunt  
12 asserted a federal RICO claim in addition to his state-law causes of action, Zuffa addresses only  
13 state-law standards for attorney’s fees and costs and fails to consider the *Erie Railroad Company*  
14 v. *Tompkins*<sup>2</sup> questions involved. So I deny its motion without prejudice to the refiling of a  
15 more developed motion.

## DISCUSSION

17        “The general rule in federal courts is that ‘absent statute or enforceable contract, litigants  
18 pay their own attorneys’ fees.’”<sup>3</sup> “[I]n a ‘pure federal question case’ in federal court, federal law  
19 governs attorneys’ fees.”<sup>4</sup> But “[i]n an action where a district court is exercising its subject

<sup>1</sup> L.R. 54-14(d).

<sup>2</sup> *Erie R. Co. v. Tompkins*, 304 U.S. 817 (1938).

<sup>22</sup> <sup>3</sup> *Indep. Living Ctr. of S. California, Inc. v. Kent*, 909 F.3d 272, 281 (9th Cir. 2018) (quoting *Alyeska Pipeline Serv. Co v. Wilderness Soc'y*, 421 U.S. 240, 257 (1975)).

<sup>23</sup> <sup>4</sup> *Id.* (quoting *Disability Law Ctr. of Alaska, Inc. v. Anchorage Sch. Dist.*, 581 F.3d 936, 940 (9th Cir. 2009)).

1 matter jurisdiction over a state law claim, so long as ‘state law does not run counter to a valid  
 2 federal statute or rule of court, and usually it will not, state law denying the right to attorney’s  
 3 fees or giving a right thereto, which reflects a substantial policy of the state, should be  
 4 followed.’’’<sup>5</sup> Consequently, the Ninth Circuit has found error when a district court applied state  
 5 law regarding attorney’s fees that conflicts with federal common law.<sup>6</sup>

6 Zuffa seeks the attorney’s fees and costs it incurred defending all of Hunt’s claims,  
 7 including the federal RICO claim.<sup>7</sup> But Zuffa applies only the standards under Nevada law and  
 8 fails to consider the potential *Erie* questions. Assuming without deciding that Nevada law could  
 9 provide a basis for an award of attorney’s fees on the federal RICO claim,<sup>8</sup> the Ninth Circuit’s  
 10 common law addressing when a prevailing defendant in a RICO action may recover attorney’s  
 11 fees authorized by a contract—like the PARA—may conflict with state law.<sup>9</sup> Additionally, the  
 12 federal statute and local rule addressing what costs may be recovered may conflict with the  
 13 Nevada cost statute that Zuffa relies on.<sup>10</sup>

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15 <sup>5</sup> *MRO Commc’ns, Inc. v. Am. Tel. & Tel. Co.*, 197 F.3d 1276, 1281 (9th Cir. 1999) (quoting  
 16 *Alyeska Pipeline Serv.*, 421 U.S. at 259 n.31).

17 <sup>6</sup> *See Home Sav. Bank by Resolution Tr. Corp. v. Gillam*, 952 F.2d 1152, 1162 (9th Cir. 1991).

18 <sup>7</sup> ECF Nos. 186-1; 186-2.

19 <sup>8</sup> *See Kent*, 909 F.3d at 283 (“[T]he *Erie* doctrine ‘applies irrespective of whether the source of  
 20 subject matter jurisdiction is diversity or federal question.’’’) (quoting *Vess v. Ciba-Geigy Corp.*  
*USA*, 317 F.3d 1097, 1102 (9th Cir. 2003)); *but see Gallagher v. Crystal Bay Casino, LLC*, No.  
 21 3:08-CV-00055-ECR, 2012 WL 1409244, at \*6 (D. Nev. Apr. 20, 2012) (“Nevada law cannot  
 22 provide a basis for an award of attorney’s fees on a federal copyright infringement claim.”).

23 <sup>9</sup> *See Chang v. Chen*, 95 F.3d 27, 29 (9th Cir. 1996) (recovery of fees defending RICO claim not  
 24 authorized by agreement shifting fees for disputes “arising out of” it); *Stitt v. Williams*, 919 F.2d  
 25 516, 530 (9th Cir. 1990) (recovery of fees defending RICO claim authorized by agreement  
 26 shifting fees for disputes “in any . . . way pertaining to Partnership affairs or this Agreement”).

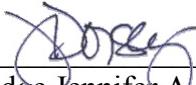
<sup>10</sup> 28 U.S.C. § 1920; L.R. 54-11 (disallowing, among other things, costs for computer research  
 27 fees); Nev. Rev. Stat. § 18.005 (allowing, among other things, “reasonable and necessary  
 28 expenses for computerized services for legal research”).

1 If there is a conflict and fees or costs are not recoverable for some but not all of Hunt's  
2 claims, I cannot decide on the current record which fees and costs should be apportioned to  
3 Zuffa's defense of the state-law claims and which should be apportioned to Zuffa's defense of  
4 the federal RICO claim.<sup>11</sup> So I deny Zuffa's motion without prejudice to its refiling of a  
5 properly supported motion that addresses these additional issues.

6 **Conclusion**

7 Accordingly, **IT IS HEREBY ORDERED** that Zuffa, LLC's motion for attorney's fees  
8 [ECF No. 186] is **DENIED** without prejudice to refiling by September 4, 2020.

9 Dated: August 5, 2020

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11 U.S. District Judge Jennifer A. Dorsey

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<sup>11</sup> ECF No. 186-2.